

Abdhish R. Bhavsar, M.D. 8/11/2008
In Re: Viagra Products Liability Litigation

Page 1

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: * MDL Case No. 1724

VIAGRA PRODUCTS LIABILITY *

LITIGATION *

*

This document relates to: *

*

RICHARD W. STANLEY, *

*

Plaintiff, *

*

vs. *

*

PFIZER INC., *

*

Defendant. *

*

CASE NO. 06-CV-1065 (PAM) *

*

DEPOSITION OF
ABDHISH R. BHAVSAR, M.D.

Taken August 11, 2008
Commencing at 5:20 p.m.

REPORTED BY: MARY P. MITCHELL, RDR, CRR, CCP
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1	Deposition of ABDHISH R. BHAVSAR, M.D.		
2	taken on August 11, 2008, commencing at 5:20 p.m.,		
3	at the office of deponent, Retina Center, 710 East		
4	24th Street, Suite 304, Minneapolis, Minnesota,		
5	before Mary P. Mitchell, Registered Diplomate		
6	Reporter, Certified Realtime Reporter, Certified		
7	CART Provider, and Notary Public of and for the		
8	State of Minnesota.		
9	*****		
10			
11			
12			
	APPEARANCES		
13	On Behalf of the Plaintiff:		
14	Peter A. Miller, Esq. pmiller@doctoratlaw.com		
15	THE MILLER FIRM LLC The Sherman Building 108 Railroad Avenue		
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19	Lori B. Leskin, Esq. lleskin@kayescholer.com		
20	Avigael Fyman, Esq. afyman@kayescholer.com		
21	KAYE SCHOLER LLP 425 Park Avenue New York, New York 10022 (212) 836-8000		
22			
23			
24	NOTE: The original transcript will be filed with Kaye Scholer LLP, pursuant to the applicable Rules of Civil Procedure.		
25			
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9			
10	INSTRUCTIONS NOT TO ANSWER: (None.)		
11			
12	PRODUCTION REQUESTS: 12, 23, 80.		
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14	DR. BHAVSAR EXHIBITS MARKED AND REFERRED TO:		
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<p>1 correct?</p> <p>2 A. He does not.</p> <p>3 Q. Okay. Have you ever been deposed before?</p> <p>4 A. I have.</p> <p>5 Q. Okay, and how many occasions?</p> <p>6 A. Several.</p> <p>7 Q. Okay. As a fact witness or as an expert witness?</p> <p>8 A. As an expert witness.</p> <p>9 Q. Okay. And you understand you're not here as an expert witness in this litigation?</p> <p>10 A. Okay.</p> <p>11 Q. Have you been asked by the plaintiff to serve as an expert witness in this litigation?</p> <p>12 A. I don't know.</p> <p>13 Q. Okay. Have you had any contact with Mr. Stanley about the litigation?</p> <p>14 A. No, I have not.</p> <p>15 Q. Have you had any contact with any of Mr. Stanley's lawyers about the litigation?</p> <p>16 A. I have not personally had any contact with anyone about the litigation.</p> <p>17 Q. Okay. Are you aware of any request for you to give testimony as an expert in this litigation?</p> <p>18 A. No, I'm not.</p>	<p>1 "Schedule A"?</p> <p>2 A. Yes.</p> <p>3 Q. Have you seen that list before?</p> <p>4 A. I don't know.</p> <p>5 Q. Were you aware that we had asked that certain documents be brought with you to this deposition?</p> <p>6 A. No.</p> <p>7 Q. Okay. Well, have you brought with you your file on Richard Stanley?</p> <p>8 A. Yes.</p> <p>9 Q. Other than the file that you brought with you, do you have any other files that would contain correspondence with Mr. Stanley?</p> <p>10 A. No.</p> <p>11 Q. Other than the file you brought with you, do you have any files that would contain documentation about Mr. Stanley?</p> <p>12 A. No.</p> <p>13 Q. Other than the file you brought with you, do you have any correspondence with Mr. Stanley or with anyone about Mr. Stanley?</p> <p>14 A. No.</p> <p>15 Q. Have you engaged in any e-mail correspondence with Mr. Stanley?</p>
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<p>1 Q. Have you been asked to prepare a report from the point of view of an expert in this litigation?</p> <p>2 A. No.</p> <p>3 Q. You understand that my role -- my objective here is simply to ask you questions, factual questions about your care and treatment of Mr. Stanley, correct? Yes?</p> <p>4 A. Okay.</p> <p>5 Q. Okay. And you understand you're not being sued by Mr. Stanley.</p> <p>6 A. Okay.</p> <p>7 Q. And you're not a defendant in this action.</p> <p>8 A. Okay.</p> <p>9 Q. Has anyone contacted you about potential litigation by Mr. Stanley against you?</p> <p>10 A. No.</p> <p>11 Q. I'm going to show you what we've marked as Bhavsar -- am I pronouncing your name correctly?</p> <p>12 A. Yes.</p> <p>13 Q. Okay, as Bhavsar Exhibit 1. This is a copy of a subpoena sent to you in this case. Have you seen this before?</p> <p>14 A. I do not know for certain.</p> <p>15 Q. Okay. If you take a look at the third page of this document, you see there's a page entitled</p>	<p>1 A. I don't know.</p> <p>2 Q. If you had engaged in e-mail correspondence with Mr. Stanley, would you keep a hard copy of that?</p> <p>3 A. Usually, yes.</p> <p>4 Q. Okay.</p> <p>5 A. If it was of substantive value to his care that I was providing.</p> <p>6 Q. In your file that you have before you, do you have correspondence with Mr. Stanley, e-mail correspondence with Mr. Stanley?</p> <p>7 A. I have an e-mail from Richard Stanley to Dr. Pomeranz, and I have a copy of that e-mail. But that e-mail does not seem to have been written to me.</p> <p>8 Q. Okay, that was not provided to us as part of the records that we received earlier. But we'll come back to that as we review the files that we received. And we may ask for a copy of that during the course of the deposition.</p> <p>9 Have you had any correspondence with Mrs. Stanley regarding Mr. Stanley's medical care?</p> <p>10 A. Not that I remember.</p> <p>11 Q. You referenced a copy of an e-mail from Mr. Stanley to Dr. Pomeranz. Have you had any</p>

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<p style="text-align: right;">Page 10</p> <p>1 correspondence with Dr. Pomeranz regarding 2 Mr. Stanley's case? 3 A. I think yes, probably, that is correct. 4 Q. And would that have been written 5 correspondence or telephonic communications? 6 A. Written correspondence. 7 Q. And do you have copies of the correspondence 8 you had with Dr. Pomeranz? 9 A. No. 10 Q. Were those e-mail correspondence or letters? 11 A. It could be e-mail. 12 Q. Would you still have those on your computer 13 in your e-mail account? 14 A. I do not know. 15 Q. Would that be from your work e-mail address 16 or your personal e-mail address that you had the 17 correspondence with Dr. Pomeranz? 18 A. My -- probably my personal e-mail address. 19 Q. You published an article with Dr. Pomeranz, 20 correct? 21 A. That's correct. 22 Q. The e-mail correspondence that you had with 23 Dr. Pomeranz, was that relating to the article you 24 published with him? 25 A. Yes.</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. If you look at No. 3 on Schedule A, you'll 2 see it calls for "Drafts, notes, data and final 3 versions of studies or case reports related to the 4 medical condition and treatment of Richard Stanley." 5 Did anyone communicate to you that you 6 were -- that we had asked that that material be 7 brought to the deposition? 8 A. No. 9 Q. Can we ask that following the conclusion of 10 the deposition perhaps we can coordinate receiving 11 copies of that file from you? 12 A. Yes. Although I should let you know I don't 13 know where the file is. 14 Q. Okay. 15 A. I have moved, and I don't actually know 16 where it is right now. And I don't know if I can 17 find it. But I would look for it. 18 Q. Okay. That's what we would ask then. 19 Let me show you what we marked as Exhibit 2. 20 This is a copy of -- purports to be a copy of the 21 curriculum vitae you provided us at the beginning of 22 the deposition. Can you please take a look at that 23 and confirm that is your current CV? 24 A. Yes. 25 Q. And does the CV accurately reflect your</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. Did you have any other e-mail correspondence 2 with Dr. Pomeranz? 3 A. Not aside from relating to the publication 4 of the article. 5 Q. Okay. Do you have any written 6 correspondence or written files or files of 7 documentation relating to the article you published 8 with Dr. Pomeranz? 9 A. I may have a file with the paper in it or 10 with the publication in it. 11 Q. Okay. With just the final publication in 12 it? 13 A. Yes. 14 Q. Do you have drafts of that publication? 15 A. I do not know. 16 Q. If you did have drafts, would it be in that 17 file? 18 A. Yes. 19 Q. And any correspondence you had with 20 Dr. Pomeranz, would that be in that file? 21 A. Yes. 22 Q. Is that file maintained here at the office? 23 A. It is not. 24 Q. Where is that file maintained? 25 A. In my house.</p>	<p style="text-align: right;">Page 13</p> <p>1 education and training? 2 A. Yes. 3 Q. Does it accurately reflect your employment 4 history? 5 A. Yes. 6 Q. Does the CV accurately reflect your medical 7 appointments? 8 A. Yes. 9 Q. And does it accurately reflect your 10 publications? 11 A. Yes. 12 Q. Are there any articles that you have written 13 that do not appear on this CV? 14 A. It is possible. 15 Q. Can you tell from looking at the CV what 16 articles you've written that do not appear in the 17 CV? 18 A. No. 19 Q. What is the most recent article you've 20 published? 21 A. "A Report on the Rates of Endophthalmitis 22 and the Diabetic Retinopathy Research Clinical Trial 23 Network." 24 Q. Does that article appear on your CV? 25 A. It does not.</p>

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<p>1 Q. And when was that article published? 2 A. This past year. 3 Q. Which journal was that published in? 4 A. American Journal of Ophthalmology. 5 Q. And who is the lead author on that article? 6 A. I was. 7 Q. Looking at your CV, can you determine when 8 the last time it was updated -- when was the last 9 time it was updated? 10 A. I cannot tell. But earlier this year. 11 Q. Are there any other articles that you recall 12 publishing that you do not see listed in that CV? 13 A. No. 14 Q. Are there any articles on nonarteritic 15 ischemic optic neuropathy that you've published 16 other than the paper with Dr. Pomeranz? 17 A. No. 18 Q. Have you published any papers regarding 19 Viagra other than the paper with Dr. Pomeranz? 20 A. No. 21 Q. Are you currently board certified? 22 A. Yes. 23 Q. In what area? 24 A. Ophthalmology. 25 Q. Are you a neuro-ophthalmologist?</p>	<p>1 be known as arteritic anterior ischemic optic 2 neuropathy, correct? 3 A. Yes. 4 Q. And by optic neuropathy, that means that 5 there's a damage to the optic nerve, correct? 6 A. Yes. 7 Q. And anterior, that's the front part of the 8 optic nerve? 9 A. That's correct. 10 Q. And that's the part meaning that comes into 11 the eye, correct, at the back of the eye? 12 A. That's correct. 13 Q. Is that also known as the optic nerve head? 14 A. Yes. 15 Q. And ischemic would tend to mean that there's 16 a decrease in blood flow, correct? 17 A. Yes. 18 Q. Are you comfortable with the abbreviation 19 NAION for nonarteritic anterior ischemic optic 20 neuropathy? 21 A. N-A-I-O-N? 22 Q. Correct. 23 A. Yes. 24 Q. Okay. It makes it much easier for me. And 25 the court reporter.</p>
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<p>1 A. I am not. 2 Q. You are a retina specialist? 3 A. Yes. 4 Q. And what does that mean? 5 A. That means I diagnose and treat diseases of 6 the retina and of the eyes, because I'm board 7 certified in ophthalmology as well. 8 Q. Do you treat patients with nonarteritic 9 ischemic optic neuropathy as part of your practice? 10 A. Yes. 11 Q. How many patients in the course of a year 12 would you estimate you treat with nonarteritic 13 ischemic optic neuropathy? 14 A. Probably about ten. 15 Q. What is nonarteritic ischemic optic 16 neuropathy? 17 A. It's a disease of the optic nerve that 18 primarily results from nonarteritic etiologies. 19 Q. Nonarteritic meaning -- well, what would 20 arteritic etiology mean? 21 A. Inflammatory related to giant cell 22 arteritis, or some other condition that was 23 primarily inflammatory in disorder rather than 24 vascular. 25 Q. And the inflammatory condition, that would</p>	<p>1 Now, what causes NAION? 2 A. Well, the etiology is thought to believe to 3 be small vessel disease of the optic nerve and 4 posteriorly or posterior ciliary circulation of the 5 eye. 6 Q. Is it a thrombotic event? 7 MR. MILLER: I'm going to object, it 8 calls for expert testimony. 9 Q. You can answer if you're able, Doctor. 10 A. It could be. 11 Q. In your treatment of Mr. Stanley, were you 12 able to determine whether his NAION was thrombotic? 13 A. No. 14 Q. No you were not able to determine? Or it 15 was not thrombotic? 16 A. I am not able to determine that. 17 Q. Is NAION a hemorrhagic event? 18 A. It is not. 19 Q. In looking at a patient such as Mr. Stanley, 20 in examining his eye, can you determine what caused 21 his NAION? 22 A. No. 23 Q. How common is NAION? 24 A. It is relatively common. 25 Q. Would you agree that it's one of the most</p>

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<p>1 common optic nerve disorders?</p> <p>2 A. Yes.</p> <p>3 Q. What's your understanding of the risk</p> <p>4 factors for NAION?</p> <p>5 MR. MILLER: Object, calls for expert</p> <p>6 testimony.</p> <p>7 A. In general, cardiovascular risk factors.</p> <p>8 Q. So would hypertension be a risk factor?</p> <p>9 A. Yes.</p> <p>10 Q. And cardiovascular disease would be a risk</p> <p>11 factor?</p> <p>12 A. Yes.</p> <p>13 Q. Diabetes would be a risk factor?</p> <p>14 A. Yes.</p> <p>15 Q. Would a cardiac rhythm disorder be a risk</p> <p>16 factor for NAION?</p> <p>17 A. It's possible.</p> <p>18 Q. Would atrial flutter be a risk factor for</p> <p>19 NAION?</p> <p>20 A. It's possible.</p> <p>21 Q. What is your understanding of the mechanism</p> <p>22 of NAION?</p> <p>23 MR. MILLER: Objection again, calls for</p> <p>24 expert testimony.</p> <p>25 A. My understanding is that small vessel</p>	<p>1 OCTs.</p> <p>2 Q. Do fluorescein angiograms, are they used to</p> <p>3 diagnose NAION?</p> <p>4 A. They can be used in the diagnosis, yes.</p> <p>5 Q. And you also mentioned OCTs?</p> <p>6 A. Yes.</p> <p>7 Q. That's a different test?</p> <p>8 A. That's a different type of test.</p> <p>9 Q. And is that test used to diagnose NAION?</p> <p>10 A. I'm not aware of that.</p> <p>11 Q. Now, you are a former chair of the Phillips</p> <p>12 Eye Institute, correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And are you still affiliated with the</p> <p>15 Phillips Eye Institute?</p> <p>16 A. Yes.</p> <p>17 Q. And your practice here is called the Retina</p> <p>18 Center?</p> <p>19 A. Yes.</p> <p>20 Q. And is this where you saw Mr. Stanley as a</p> <p>21 patient?</p> <p>22 A. Yes.</p> <p>23 Q. Do you do research for any pharmaceutical</p> <p>24 companies?</p> <p>25 A. I do research in clinical trials that have</p>
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<p>1 disease affects the blood flow to the optic nerve,</p> <p>2 and that results in damage to the optic nerve</p> <p>3 anteriorly, and that results in vision loss.</p> <p>4 Q. As I understand, you're an assistant</p> <p>5 professor at the University of Minnesota?</p> <p>6 A. I'm an adjunct assistant professor at the</p> <p>7 University of Minnesota.</p> <p>8 Q. Okay, and what courses do you teach?</p> <p>9 A. I teach the residents in ophthalmology for</p> <p>10 retinal diseases.</p> <p>11 Q. Is that the name of the course that you</p> <p>12 teach?</p> <p>13 A. It is not a course. It is teaching the</p> <p>14 residents in surgery and in clinic seeing patients.</p> <p>15 Q. And how many days a week do you spend with</p> <p>16 students, with residents?</p> <p>17 A. Approximately one day a week. Excuse me,</p> <p>18 one half day a week.</p> <p>19 Q. Okay.</p> <p>20 A. There is also a course that I teach. It's</p> <p>21 called a Fluorescein Conference course, and that's</p> <p>22 once a month.</p> <p>23 Q. And what does that teach?</p> <p>24 A. We teach imaging of the retina with</p> <p>25 different tests called fluorescein angiograms and</p>	<p>1 pharmaceutical companies as sponsors, but I don't do</p> <p>2 the research for them.</p> <p>3 Q. You maintain your independence?</p> <p>4 A. That's correct.</p> <p>5 Q. What pharmaceutical companies have sponsored</p> <p>6 your clinical -- clinical trials that you have</p> <p>7 conducted?</p> <p>8 A. Genentech. Novartis. Allergen. QLT.</p> <p>9 ISTA.</p> <p>10 Q. Any others?</p> <p>11 A. I don't recall any others.</p> <p>12 Q. Have you ever conducted any clinical trials</p> <p>13 sponsored by Novartis?</p> <p>14 A. Yes.</p> <p>15 Q. Have you ever conducted any clinical trials</p> <p>16 sponsored by Pfizer?</p> <p>17 A. No.</p> <p>18 Q. Have you ever conducted any clinical trials</p> <p>19 involving NAION patients?</p> <p>20 A. I have not.</p> <p>21 (Bhavsar Deposition Exhibit No. 3</p> <p>22 marked for identification.)</p> <p>23 Q. Doctor, I want to show you what we're</p> <p>24 marking as Bhavsar Exhibit 3. During the course of</p> <p>25 this litigation, Pfizer, through its attorneys,</p>

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<p style="text-align: center;">Page 22</p> <p>1 asked for copies of your file on Mr. Stanley. What 2 we've marked as Exhibit 3 is the complete file we 3 received from your office. And you'll see on the 4 bottom right-hand corner there's a number called a 5 Bates number, it says STANLEY,R BHAVSAR and then 6 it's numbered 1 through 14. Do you see those 7 numbers?</p> <p>8 A. Yes.</p> <p>9 Q. Those are the numbers that we put on there 10 to better identify the various pages.</p> <p>11 Now, the file you have before you that you 12 brought with you to the deposition today seems to be 13 larger than the file we've marked as Exhibit 3. Is 14 that correct?</p> <p>15 A. I do not know.</p> <p>16 Q. I'd like to ask you to take a couple minutes 17 and compare the two.</p> <p>18 A. (Examining.) Can you please repeat the 19 question.</p> <p>20 Q. Sure. Are there documents -- I'll rephrase. 21 Are there documents in the file you brought with you 22 to the deposition today that do not appear as part 23 of Exhibit 3 that we've marked today?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. What I'd like to do, if with your</p>	<p style="text-align: center;">Page 24</p> <p>1 complete and accurate record of your patient's 2 medical treatment?</p> <p>3 A. Yes.</p> <p>4 Q. And do you depend on the accuracy and 5 completeness of your medical records in order to 6 provide proper treatment to your patients?</p> <p>7 A. Pardon me?</p> <p>8 Q. Do you depend on the accuracy and 9 completeness of your records in order to provide 10 proper treatment to your patients?</p> <p>11 A. That is a part of providing medical care, 12 but it is not the most important part.</p> <p>13 Q. Okay.</p> <p>14 A. Providing good medical care for the patient.</p> <p>15 Q. Let me ask you this then. Do you strive to 16 maintain accurate records?</p> <p>17 A. Yes.</p> <p>18 Q. And if a patient provides you with 19 information, do you write that down in their records 20 as accurately as possible?</p> <p>21 A. Yes.</p> <p>22 Q. And completely as possible?</p> <p>23 A. Yes.</p> <p>24 Q. There are notes in your files that we have 25 from your examination and visits with Mr. Stanley.</p>
<p style="text-align: center;">Page 23</p> <p>1 permission, is to take a brief look through your 2 file. And perhaps we can mark with a Post-It note 3 those documents that were not previously provided to 4 us and have copies made and attached to the 5 deposition as a supplemental exhibit.</p> <p>6 A. (Hands file to Ms. Leskin.)</p> <p>7 Q. Thank you.</p> <p>8 A. You're welcome.</p> <p>9 (Discussion held off the record.)</p> <p>10 BY MS. LESKIN:</p> <p>11 Q. Doctor, during the break we've marked a few 12 pages from the file. And if at some point we can 13 get a copy made, we'll attach that as a supplement 14 to the deposition as well.</p> <p>15 A. Okay.</p> <p>16 Q. Thank you. I'm going to go through some of 17 the pages that we do have in Exhibit 3. You can 18 feel free to use your original if it's easier to 19 read if -- which I'm sure it will be. And then at 20 some point we'll ask you some questions about some 21 of the other documents as well.</p> <p>22 I just want to start, though, with a couple 23 questions about your filing and your recordkeeping 24 here at the office.</p> <p>25 Is it your regular practice to maintain a</p>	<p style="text-align: center;">Page 25</p> <p>1 What is your practice as to how those notes are 2 created?</p> <p>3 A. Which notes do you refer to?</p> <p>4 Q. Okay. I'll use as an example, if you look 5 at Exhibit 3, page 1, appears to be a note dated 6 3/12/01. This first page here. You see which note 7 I'm talking about?</p> <p>8 A. Yes.</p> <p>9 Q. What is the practice as to how a note like 10 that is created in the course of your practice?</p> <p>11 What is your regular business practice here?</p> <p>12 A. Our technical staff checks the visual acuity 13 of the patient and intraocular pressure of the 14 patient and asks the patient the history of what 15 brings them into the office, including the chief 16 complaint and the history of present illness, 17 including medication changes or eye drop changes.</p> <p>18 Then I perform the ocular examination and 19 note my findings on the sheet, including anterior 20 segment examination and retinal examination.</p> <p>21 Q. Is it your practice -- is it your office's 22 routine practice that the technician completes the 23 information on the form regarding visual acuity, 24 intraocular pressure, history of the chief 25 complaint, history of the illness, and medication</p>

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<p>1 changes at or about the time that that information 2 is taken from the plaintiff -- from the patient?</p> <p>3 A. Yes.</p> <p>4 Q. And is it your practice, your routine 5 practice to write the notes regarding your findings 6 as part of the exam at or about the time that you're 7 seeing the patient?</p> <p>8 A. Yes.</p> <p>9 Q. So are your notes created contemporaneously 10 with the visit with the patient?</p> <p>11 A. Yes.</p> <p>12 Q. There are also letters that you send to 13 primary care physicians or referring physicians in 14 your records?</p> <p>15 A. Yes.</p> <p>16 Q. And do you dictate those letters -- well, 17 let me ask you this. When do you generally dictate 18 those letters?</p> <p>19 A. At the time that I'm seeing the patient.</p> <p>20 Q. And is that in the room with the patient 21 there?</p> <p>22 A. Most of the time, yes.</p> <p>23 Q. And if it's not in the room with the patient 24 there, is it contemporaneous, though, with that 25 patient's visit?</p>	<p>1 Q. And what causes a retinal tear? 2 A. Posterior vitreous detachment, which is an 3 aging change in the eye.</p> <p>4 Q. And in Mr. Stanley's case, were you able to 5 determine what caused his retinal detachment?</p> <p>6 A. It was caused by -- yes.</p> <p>7 Q. And what caused Mr. Stanley's retinal 8 detachment?</p> <p>9 A. A tear in the retina.</p> <p>10 Q. And what caused the tear in the retina in 11 Mr. Stanley's case?</p> <p>12 A. Most likely aging changes in the eye.</p> <p>13 Q. And that's the vitreous detachment that you 14 referred to?</p> <p>15 A. That's correct.</p> <p>16 Q. Do you have an independent recollection of 17 your care and treatment of Mr. Stanley?</p> <p>18 A. How do you mean?</p> <p>19 Q. Do you, sitting here today, do you recall 20 meeting Mr. Stanley on June 5th, 2000?</p> <p>21 A. No.</p> <p>22 Q. And do you have an independent recollection 23 of the examination on June 5th, 2000?</p> <p>24 A. Not without my notes.</p> <p>25 Q. Okay, and so you're using your notes to</p>
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<p>1 A. Yes.</p> <p>2 Q. If a patient provides you with information, 3 is it your routine practice to keep track of that 4 information in your files?</p> <p>5 A. Yes.</p> <p>6 Q. And would you agree with me it's important 7 to take accurate notes of your findings?</p> <p>8 A. Yes.</p> <p>9 Q. And it's important to take accurate notes of 10 your conversations with your patients?</p> <p>11 A. Yes.</p> <p>12 Q. When was the first time you met Mr. Stanley?</p> <p>13 A. June 5th, 2000.</p> <p>14 Q. And how did Mr. Stanley come to be a patient 15 of yours?</p> <p>16 A. He was sent to me by Dr. Sheridan.</p> <p>17 Q. And what was the reason that you understood 18 that Dr. Sheridan sent Mr. Stanley to you?</p> <p>19 A. For a retinal detachment.</p> <p>20 Q. And what's a retinal detachment?</p> <p>21 A. A retinal detachment is when the retina 22 becomes detached from the posterior wall of the eye.</p> <p>23 Q. And what causes a retinal detachment?</p> <p>24 A. Retinal tears are the most common cause of 25 retinal detachment.</p>	<p>1 refresh your recollection?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. I'm going to ask you to look at your 4 letter to Dr. Sheridan, dated June 5th, 2000. In 5 Exhibit 3 it has the Bates stamp page 13. And feel 6 free to look at the original once you confirm for me 7 that that page 13 is in fact your letter.</p> <p>8 A. Yes. Although it is not -- yes, it is, 9 that's correct.</p> <p>10 Q. Okay. And if you look at the second page, 11 the one marked 14, it has your signature line but no 12 signature. Would the original that you sent to 13 Dr. Sheridan have had your signature?</p> <p>14 A. No.</p> <p>15 Q. Is it your regular practice not to send 16 these with your signature?</p> <p>17 A. It was at that time.</p> <p>18 Q. Has that changed since then?</p> <p>19 A. Yes.</p> <p>20 Q. Does this appear to be a true and correct 21 copy of the letter you sent to Dr. Sheridan on or 22 about June 5th, 2000?</p> <p>23 A. Yes.</p> <p>24 Q. Now, if you take a look at that first 25 paragraph in the letter, the last line says, "He</p>

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<p>1 also has a history of hypertension and atrial 2 flutter and is on Coumadin, chlorthalidone, Lanoxin 3 and digoxin." Did I read that correctly? 4 A. Which letter are you referring to? 5 Q. The June 5th, 2000 letter, the first 6 paragraph. 7 A. Yes. 8 Q. The last sentence. What was that 9 information based on? 10 A. The history that the patient gave me and my 11 staff. 12 Q. Did Mr. Stanley tell you any other 13 medications that he was taking as of June 5th, 2000? 14 A. He did not. 15 Q. A little bit further down that first page 16 you note that his cup-to-disc is 0.2. Do you see 17 that reference? 18 A. Yes. 19 Q. What does that mean, cup-to-disc is 0.2? 20 A. The cup-to-disc ratio is the ratio of the 21 central cupping of the optic nerve to the rest of 22 the optic nerve. 23 Q. And is 0.2 considered small? 24 A. No. 25 Q. Is there a tool that you use to measure a</p>	<p>1 weeks versus years versus one day. 2 Q. And what were you able to conclude for 3 Mr. Stanley? 4 A. His retinal detachment appeared chronic, 5 given the partial demarcation line in the retina and 6 the scar tissue that was present on the surface of 7 the retina. 8 Q. And when you say chronic, what does that 9 mean? 10 A. At least several weeks old. 11 Q. The first paragraph of your letter says that 12 he had noticed flashes and floaters in the left eye 13 six months ago, as well as a nasal shimmer of light 14 in the left eye. Do you see that? 15 A. Yes. 16 Q. Is that -- are those symptoms of a retinal 17 detachment? 18 A. Yes. 19 Q. No. 3 on your impression list says, 20 "Age-Related macular degeneration without CNVM, both 21 eyes." What is CNVM? 22 A. Choroidal neovascular membrane. 23 Q. And what is macular degeneration without 24 CNVM? 25 A. It's age-related disease of the center part</p>
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<p>1 cup-to-disc ratio? 2 A. We use our assessment visually of the 3 relationship of the optic nerve to the remainder of 4 the optic nerve. 5 Q. But there's no tool or a ruler or anything 6 that you would use to measure that? 7 A. No. 8 Q. It's based on your experience in treating 9 patients, correct? 10 A. That's correct. 11 Q. Now, under "Impression" you've listed six 12 items here from this June 5th letter. No. 1 is the 13 chronic retinal detachment. And that was in his 14 left eye, correct? 15 A. Yes. 16 Q. Okay, No. 2 says, "Mild PVR, left eye." 17 What does that mean? 18 A. That means proliferative vitreoretinopathy, 19 which is scar tissue on the surface of the retina. 20 Q. And what causes that? 21 A. Chronicity of the retinal detachment. 22 Q. Were you able to tell based on your 23 examination how long Mr. Stanley had suffered from 24 his retinal detachment by the time you'd seen him? 25 A. Not exactly. However, we can get an idea of</p>	<p>1 of the retina without choroidal neovascular -- 2 choroidal neovascular membrane growing in the retina 3 or onto the retina. 4 Q. And is there significance to not having the 5 -- a choroidal neovascularization? 6 A. Yes, that's good. 7 Q. Okay. No. 4 is, "Reticular pigmentary 8 degeneration." What is that? 9 A. Those are aging changes in the peripheral 10 retinal pigmentation pattern of the retina. They 11 are associated with macular degeneration. 12 Q. No. 5 is, "Paving-Stone degeneration." What 13 does that mean? 14 A. That is a form of atrophic degeneration that 15 typically occurs in a circular pattern at the 16 periphery of the retina. 17 Q. And what is the significance of that? 18 A. It is not significant. 19 Q. No. 6 is, "PVD, left eye." What is that? 20 A. Posterior vitreous detachment. 21 Q. And is that what we were talking about 22 before? 23 A. Yes. 24 Q. And you said that's related to aging? 25 A. That's correct.</p>

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<p>1 Q. At the time you saw Mr. Stanley on June 5th, 2 did you make any findings as to his right eye? 3 A. Yes. 4 Q. What did you find as to his right eye? 5 A. Age-related macular degeneration, peripheral 6 reticular pigmentary degeneration, and paving-stone 7 degeneration. 8 Q. Did you make any notations as to the 9 appearance of his optic nerve head? 10 A. Cup-to-disc ratio 0.2. 11 Q. And that's the only observation you made? 12 A. Yes. 13 Q. Now, you recommended that Mr. Stanley have 14 surgery to correct his -- his detached retina, 15 correct? 16 A. Yes. 17 Q. And you said that you recommended scleral 18 buckle surgery? 19 A. Yes. 20 Q. What is scleral buckle surgery? 21 A. It's a way to fix retinas with a silicone 22 band that is sewn to the outside of the eye wall. 23 Q. And that kind of supports it like a belt, 24 right? 25 A. That's correct.</p>	<p>1 Q. And you explained that to Mr. Stanley? 2 A. Yes. 3 Q. And what were the risks associated with the 4 surgery that you did do? 5 A. The risk associated with performing surgery, 6 the major risks are pain, bleeding, infection, loss 7 of vision. 8 Q. And you explained those to Mr. Stanley? 9 A. And retinal detachment happening again, yes. 10 Q. Are cataracts associated with this type of 11 surgery? 12 A. Not typically. 13 Q. Are there any other risks associated with 14 this surgery? 15 A. There can be. 16 Q. What are the risks? 17 A. Almost anything that you could possibly 18 think of could happen during surgery. 19 Q. Is ischemic optic neuropathy a risk 20 associated with the surgery? 21 A. Not that I know of. 22 Q. Is it a risk associated with retinal 23 detachment? 24 A. No. 25 Q. When you did the surgery on Mr. Stanley, you</p>
Page 35	Page 37
<p>1 Q. And that helps keep the retina in position? 2 A. That's right. 3 Q. Now, you also said that it may require pars 4 plana vitrectomy, V-I-T-R-E-C-T-O-M-Y. What is pars 5 plana vitrectomy? 6 A. That's when we operate inside the eye with 7 microsurgical instruments to remove the vitreous gel 8 in the eye. 9 Q. And why would you need to do that in a case 10 such as Mr. Stanley's? 11 A. Sometimes it is necessary to perform 12 vitrectomy surgery if the retina cannot be 13 reattached with scleral buckle surgery. 14 Q. And in fact you did the surgery on 15 Mr. Stanley on June 6th, correct? 16 A. Yes. 17 Q. What would have been the risks to 18 Mr. Stanley had he not proceeded with the surgery? 19 MR. MILLER: Object, calls for 20 hypothetical. Sorry, Doctor, you can answer. 21 A. Sorry, I should not answer? 22 Q. You should. 23 MR. MILLER: You should, I'm sorry, 24 Doctor, yes. 25 A. It can lead to loss of vision and blindness.</p>	<p>1 did a cryoretinopexy? 2 A. Yes. 3 Q. And that involves using cold to create like 4 a scar on the retina, correct? 5 A. That's correct. 6 Q. And that helps keep the retina attached? 7 A. Yes. 8 Q. And you implanted the buckle, right? 9 A. Yes. 10 Q. Did you do a vitrectomy? 11 A. I did not. 12 Q. Now, you put an air bubble behind his 13 retina, correct, or in his eye? 14 A. Yes. 15 Q. And what's the purpose of putting an air 16 bubble in his eye? 17 A. To re-form the eye after draining the fluid 18 out from underneath the retina. 19 Q. And what type of air do you use? 20 A. Sterile air. 21 Q. How would you describe Mr. Stanley's 22 surgery, the outcome of Mr. Stanley's surgery? 23 A. Very good. Successful. 24 Q. And did the retina stay attached to your 25 knowledge?</p>

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<p>1 A. Yes.</p> <p>2 Q. Prior to September of 2000, did Mr. Stanley</p> <p>3 have any complications associated with the surgery?</p> <p>4 A. No.</p> <p>5 Q. How many times following his surgery did you</p> <p>6 see Mr. Stanley prior to September 5th, 2000?</p> <p>7 A. Four.</p> <p>8 Q. And during those visits you noticed that</p> <p>9 there was some retinal fluid remaining in his eye?</p> <p>10 A. There was some subretinal fluid.</p> <p>11 Q. Subretinal fluid. Is that normal following</p> <p>12 this type of surgery?</p> <p>13 A. It can happen.</p> <p>14 Q. Are there risks associated with the</p> <p>15 subretinal fluid?</p> <p>16 A. No.</p> <p>17 Q. And as you saw him, that pocket of fluid was</p> <p>18 decreasing, right?</p> <p>19 A. Yes.</p> <p>20 Q. And that's an improvement?</p> <p>21 A. Yes.</p> <p>22 Q. I'd like you to turn to the page of your</p> <p>23 notes that in Exhibit 3 is labeled page 2, dated</p> <p>24 September 5th, 2000. Do you see that?</p> <p>25 A. (Nodded affirmatively.)</p>	<p>1 week" there's also a line above it says "dash two</p> <p>2 weeks"?</p> <p>3 A. Yes.</p> <p>4 Q. Did I read that correctly?</p> <p>5 A. (Nodded affirmatively.)</p> <p>6 Q. Yes?</p> <p>7 A. Yes.</p> <p>8 Q. Is that your handwriting?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Now, tell me what happened on this</p> <p>11 visit that you added that in there.</p> <p>12 A. I asked the patient for the history again.</p> <p>13 And I add information that I learn from the patient</p> <p>14 after they tell me.</p> <p>15 Q. And what was the history that Mr. Stanley</p> <p>16 provided you on September 5th about his vision?</p> <p>17 A. That he saw new gray spots in the central</p> <p>18 portion of his vision in the left eye for one to two</p> <p>19 weeks. It was off to the side and it was leading to</p> <p>20 vision loss. Did not have any trouble with the</p> <p>21 right eye. And that the vision was slightly worse</p> <p>22 over the past two weeks in the left eye. He noticed</p> <p>23 decreased brightness.</p> <p>24 Q. And what does that say underneath that?</p> <p>25 A. That's a test that we do for red</p>
Page 39	Page 41
<p>1 Q. Yes?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Now at the top of the page -- there's</p> <p>4 two different types of handwriting on this page,</p> <p>5 right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Now, some of this is yours?</p> <p>8 A. Yes.</p> <p>9 Q. And whose other handwriting is this?</p> <p>10 A. My technician's.</p> <p>11 Q. Okay, and that would be, for example, where</p> <p>12 it says, "New gray spot and VA loss"?</p> <p>13 A. Yes.</p> <p>14 Q. "OS," that would be left eye, right?</p> <p>15 A. Yes.</p> <p>16 Q. Okay, and that's your technician's</p> <p>17 handwriting?</p> <p>18 A. Yes.</p> <p>19 Q. And then underneath where it says, it starts</p> <p>20 off, "times 1 week"?</p> <p>21 A. Yes.</p> <p>22 Q. Is that sentence generally in your</p> <p>23 technician's handwriting?</p> <p>24 A. Yes.</p> <p>25 Q. Now, that first word where it says "times 1</p>	<p>1 desaturation.</p> <p>2 Q. And what's the significance of that test?</p> <p>3 A. It can indicate damage to the optic nerve.</p> <p>4 Q. And what did the results of that test show?</p> <p>5 A. It's normal in the right eye. And he was</p> <p>6 unable to perform the test in the left eye.</p> <p>7 Q. Under "Medication changes" is the word</p> <p>8 "Same," you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And that's your technician's handwriting</p> <p>11 that wrote "Same"?</p> <p>12 A. Yes.</p> <p>13 Q. And then next to "Same" there's additional</p> <p>14 handwriting. Is that your handwriting?</p> <p>15 A. Yes.</p> <p>16 Q. And what did you write there?</p> <p>17 A. I wrote that he does have atrial flutter,</p> <p>18 hypertension. Cardizem was added and changed to</p> <p>19 sotalol.</p> <p>20 Q. And did you note when his Cardizem had been</p> <p>21 changed to sotalol?</p> <p>22 A. No.</p> <p>23 Q. Did you change his medication to sotalol?</p> <p>24 A. I did not.</p> <p>25 Q. And do you know when he had been changed to</p>

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<p style="text-align: right;">Page 42</p> <p>1 sotalol? 2 A. No. 3 Q. What is sotalol? 4 A. I do not know. 5 Q. And all that information on top, is that, 6 it's based on the history that was provided to you 7 by Mr. Stanley? 8 A. That's correct. 9 Q. On September 5th, 2000, correct? 10 A. Yes. 11 Q. Prior to seeing Mr. Stanley on September 12 5th, 2000, did you have any conversation with him? 13 A. Yes. 14 Q. What date did you have a conversation with 15 him? 16 A. August 28th. 17 Q. And what did he tell you on August 28th? 18 A. He called regarding decreased vision and a 19 gray central area in the left eye. And I 20 recommended that he make an appointment as soon as 21 possible. And did not have any flashes or floaters 22 and no decreased peripheral vision. I still 23 recommended an appointment as soon as possible. He 24 preferred to finish vacation and come in next week. 25 Q. Did he tell you when you spoke to him on</p>	<p style="text-align: right;">Page 44</p> <p>1 Occasional anterior vitreous cell. The fundus 2 examination showed disc edema with dilated -- mildly 3 dilated retinal veins. Drusen in the macula. Good 4 scleral buckle. The same small area of subretinal 5 fluid. Posterior vitreous detachment. 6 Q. And what was your impression based on your 7 examination? 8 A. Optic neuropathy, left eye. And status post 9 retinal detached repair stable in the left eye. 10 Q. And what was your plan? 11 A. Consult Dr. Steven Grosser for evaluation 12 and workup. 13 Q. And can you read the rest of that line? 14 A. "He will see the patient tomorrow and I 15 talked to Dr. Grosser." 16 Q. And who is Dr. Grosser? 17 A. He is an ophthalmologist and neuro -- 18 practices neuro-ophthalmology. 19 Q. And where is he located? 20 A. On the west side of the cities. 21 Q. And to your knowledge, did Mr. Stanley ever 22 see Dr. Grosser? 23 A. I do not know. (Examining.) 24 Q. Do you have any communications from 25 Dr. Grosser?</p>
<p style="text-align: right;">Page 43</p> <p>1 August 28th as to how long those symptoms had been 2 going on? 3 A. I don't know. 4 Q. Do you know where he was on vacation at the 5 time he called you? 6 A. I do not remember. 7 Q. During that telephone conversation on August 8 28th -- strike that. 9 During your meeting with him on September 10 5th, did he tell you what time of day he first noted 11 his decreased vision? 12 A. No. 13 Q. Did he tell you what he was doing at the 14 time he noticed his decreased vision? 15 A. No. 16 Q. Did you have any conversation with him 17 between August 28th and September 5th? 18 A. No. 19 Q. When you saw him on September 5th, you 20 conducted a full examination? 21 A. Yes. 22 Q. What were your findings? 23 A. His visual acuity was 2 foot 200 in the left 24 eye. Intraocular pressure 14 millimeters mercury. 25 Anterior segment examination showed mild cataract.</p>	<p style="text-align: right;">Page 45</p> <p>1 A. I do not. 2 Q. I believe in your file one of the documents 3 that we tagged was a letter from Dr. Weingarden. Do 4 you have that in your file? It may be on the front 5 half there. 6 A. (Examining.) Yes. 7 Q. And in fact if you look at your letter dated 8 September 5th, 2000, which in the pile of materials 9 that we marked as Exhibit 3 is page 10, and that's a 10 letter you wrote to Dr. Sheridan? 11 A. Yes. 12 Q. And under the recommendation it says, "I 13 have recommended that Mr. Stanley see a 14 neuro-ophthalmologist or you. Since I believe that 15 you would prefer a neuro-ophthalmologist to work up 16 Mr. Stanley, I recommend following up with Dr. Alan 17 Weingarden. He will see Mr. Stanley and work him up 18 tomorrow." Do you see that? 19 A. Yes. 20 Q. Do you know why you switched from 21 Dr. Grosser to Dr. Weingarden? 22 A. Only if the patient did not want to go to 23 see Dr. Grosser due to the location of his office. 24 Q. Do you recall Mr. Stanley having any 25 objection to seeing Dr. Grosser?</p>

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<p style="text-align: right;">Page 46</p> <p>1 A. I don't specifically recall that, but it is 2 very possible. In fact, it is very likely. That is 3 the only reason why I would not have sent -- why he 4 would have wanted to see Dr. Weingarden instead of 5 Dr. Grosser. 6 Q. And in fact as the letter from 7 Dr. Weingarden in your file indicates, he did see 8 Dr. Weingarden, correct? 9 A. Yes. 10 Q. And you received a letter from 11 Dr. Weingarden? 12 A. Yes. 13 Q. And what did Dr. Weingarden report to you? 14 A. He appears to have ischemic optic 15 neuropathy. 16 Q. Anything else? 17 A. He thought that a short trial of Medrol Dose 18 Pack would help to decrease some of the swelling. 19 He warned him of the risks and would see him back in 20 a few weeks. 21 Q. And Medrol, that's prednisone, correct? 22 A. It is a steroid. 23 Q. And what would the purpose of giving 24 Mr. Stanley a steroid be at that point in time? 25 A. To try to decrease the inflammation in the</p>	<p style="text-align: right;">Page 48</p> <p>1 his ischemic optic neuropathy? 2 A. No. 3 Q. And in fact if you refer to your letter to 4 Dr. Sheridan and Dr. Weingarden dated March 12, 5 2001, which is page 9 of Exhibit 3, you in fact 6 released him to the care of Dr. Sheridan and 7 Dr. Weingarden, correct? 8 A. Yes. 9 Q. Is March 12, 2001 the last time you saw 10 Mr. Stanley as a patient? 11 A. Yes. 12 Q. As of March 12th, 2001, had you reached an 13 opinion to a reasonable degree of medical certainty 14 as to the cause of Mr. Stanley's ischemic optic 15 neuropathy? 16 MR. MILLER: Object, calls for expert 17 testimony. 18 A. No. 19 Q. Did you have any discussions -- as of March 20 12th, 2001, had you had any discussions with 21 Mr. Stanley as to the causes of ischemic optic 22 neuropathy? 23 A. Prior to March 12th? 24 Q. Yes. 25 A. No, not in terms of other causations aside</p>
<p style="text-align: right;">Page 47</p> <p>1 optic nerve or swelling in the optic nerve. 2 Q. As of September 5th, 2000, had you reached 3 an opinion to a reasonable degree of medical 4 certainty as to the cause of Mr. Stanley's ischemic 5 optic neuropathy? 6 A. No. 7 Q. Did you have any further follow-up with 8 Mr. Stanley following September 5th, 2000 as a 9 patient? Did he see you again? 10 A. Yes. 11 Q. When did he see you again? 12 A. March 12th, 2001. 13 Q. And what was his status at that point in 14 time? 15 A. His visual acuity in the right eye was 20/20 16 and 20/125 in the left eye. The intraocular 17 pressure was 13 in the left eye. He had mild 18 cataracts in both eyes. And the retina was attached 19 with drusen and pigmentary change in the macula. 20 And with posterior vitreous detachment and pallor to 21 the optic nerve. 22 Q. Did you recommend any further treatment for 23 his ischemic optic neuropathy? 24 A. Pardon me? 25 Q. Did you recommend any further treatment for</p>	<p style="text-align: right;">Page 49</p> <p>1 from the workup that we asked him to perform with 2 the neuro-ophthalmologist. 3 Q. To your knowledge, as of March 12, 2001, had 4 Dr. Weingarden reached an opinion as to the cause of 5 Mr. Stanley's ischemic optic neuropathy? 6 A. I do not know. 7 Q. Did you have any conversations with 8 Dr. Weingarden regarding Mr. Stanley? 9 A. Repeat that, please. 10 Q. Sure. Did you ever have any telephone 11 conversations with Dr. Weingarden regarding 12 Mr. Stanley? 13 A. I do not know. 14 Q. As of March 12th, 2001, had Mr. Stanley ever 15 told you that he had taken Viagra? 16 A. No. 17 Q. Now, you have in your files I believe we 18 identified some correspondence that Mr. Stanley sent 19 to Dr. Pomeranz, correct, that he then forwarded to 20 you? 21 A. (Examining.) Yes. 22 Q. When did you receive that? 23 A. March 14th, 2001. 24 Q. And how did you receive it? 25 A. I do not know.</p>

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<p>1 Q. And can I see the letter, since we don't 2 have a copy of it yet. 3 A. (Hands to Ms. Leskin.) 4 Q. And this was an e-mail that Mr. Stanley 5 wrote to Dr. Pomeranz, correct? 6 A. Yes. 7 Q. And this is dated March 13th, 2001? 8 A. Yes. 9 Q. And the e-mail attached an article from 10 Yahoo News, dated March 12th, correct (indicating)? 11 A. Yes. 12 Q. And that article is entitled, "Doctor Links 13 Viagra to Five Cases of Blindness," right? 14 A. Yes. 15 Q. Had you seen this article prior to 16 Mr. Stanley providing a copy of this to you? 17 A. Not that I recall. 18 Q. Prior to March 12th of 2001, did you know 19 Dr. Pomeranz? 20 A. Yes. 21 Q. He was at the University of Minnesota at the 22 time, correct? 23 A. Yes. 24 Q. Had you done any work with Dr. Pomeranz as 25 of that date?</p>	<p>1 A. No. 2 Q. Page 8 of Exhibit 3 that we've provided 3 today is a letter from you to Dr. Stanley, dated 4 March 14th, 2001; correct? 5 A. Yes. 6 Q. Now again, this copy is not signed. Would 7 it have been signed at the time you sent it to 8 Mr. Stanley? 9 A. I do not know. 10 Q. Is this in fact a true and correct copy of 11 the letter you sent to Mr. Stanley? 12 A. Yes. 13 Q. On or about March 14, 2001? 14 A. Yes. 15 Q. The last sentence of your letter says, 16 "Perhaps you may wish to consider discontinuing 17 Viagra, given these findings that you discovered." 18 Did I read that correctly? 19 A. Yes. 20 Q. And was it your understanding that as of 21 March 14th, 2001, Mr. Stanley was in fact continuing 22 to take Viagra? 23 A. Yes. 24 Q. And what was that based on? 25 A. The e-mail that he had sent me prior to my</p>
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<p>1 A. What kind of work? 2 Q. Any kind of work. 3 A. It's possible. 4 Q. Do you recall any type of work with 5 Dr. Pomeranz prior to March 12th of 2001? 6 A. It's possible that we shared patients. 7 Q. Had you done any research with Dr. Pomeranz? 8 A. No. 9 Q. Had you published any articles with 10 Dr. Pomeranz? 11 A. No, not prior to that date. 12 Q. Prior to March 12th of 2001, were you 13 familiar with any of Dr. Pomeranz's publications 14 regarding Viagra and ischemic optic neuropathy? 15 A. No, not that I remember. 16 Q. Paragraph 4, paragraph numbered 4 of 17 Mr. Stanley's e-mail to Dr. Pomeranz says, "Since 18 being treated for prostate cancer (implanted seeds 19 two years ago), the cause could have been age or the 20 treatment, I have had occasional erectile failures, 21 and my urologist suggested I try Viagra, which I 22 have done. Every week or two, a half or whole pill 23 is my usage pattern." 24 Prior to receiving this e-mail, did you know 25 that Mr. Stanley had taken Viagra?</p>	<p>1 writing the letter, which states that he has been 2 using Viagra for some time. 3 Q. When you received a copy of Mr. Stanley's 4 e-mail to Dr. Pomeranz, did you call Mr. Stanley? 5 A. I do not know if I called him. 6 Q. Sitting here today, do you recall calling 7 him? 8 A. No. 9 Q. After you received that e-mail from 10 Mr. Stanley to Dr. Pomeranz, did you call 11 Dr. Pomeranz? 12 A. I do not think so. 13 Q. Other than sending this letter dated March 14 14th, 2001, did you take any other action with 15 regard to Mr. Stanley? 16 A. I do not think so. 17 Q. After receiving a copy of Mr. Stanley's 18 e-mail to Dr. Pomeranz, did you contact anyone at 19 Pfizer? 20 A. No, I did not. 21 Q. After receiving a copy of Mr. Stanley's 22 e-mail to Dr. Pomeranz, did you reach an opinion to 23 a reasonable degree of medical certainty as to the 24 cause of Mr. Stanley's ischemic optic neuropathy? 25 MR. MILLER: Object, calls for expert</p>

14 (Pages 50 to 53)

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<p>1 testimony.</p> <p>2 A. No.</p> <p>3 Q. Did you do any research following receipt of</p> <p>4 a copy of the e-mail that Mr. Stanley sent to</p> <p>5 Dr. Pomeranz?</p> <p>6 A. I do not know.</p> <p>7 Q. Were you familiar with Viagra as of the date</p> <p>8 that you received the e-mail correspondence from</p> <p>9 Mr. Stanley?</p> <p>10 A. I think so.</p> <p>11 Q. And in what way were you familiar with the</p> <p>12 drug?</p> <p>13 A. I suspect that I had heard about the drug</p> <p>14 and its use.</p> <p>15 Q. Had you ever prescribed Viagra to any</p> <p>16 patients?</p> <p>17 A. I have not.</p> <p>18 Q. Had you done any research on Viagra as of</p> <p>19 that time?</p> <p>20 A. No.</p> <p>21 Q. Had you reviewed any of the label for Viagra</p> <p>22 as of that date?</p> <p>23 A. No.</p> <p>24 Q. Had you had any patients who had taken</p> <p>25 Viagra, other than Mr. Stanley, that you were aware</p>	<p>1 in your files?</p> <p>2 A. Yes.</p> <p>3 Q. Now, the first line of Mr. Stanley's letter</p> <p>4 to you says, "Here are what I believe to be the</p> <p>5 answers to your questions on Viagra and my bad left</p> <p>6 eye." Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. How did you contact Mr. Stanley with</p> <p>9 questions? How did that -- I should say did you</p> <p>10 contact Mr. Stanley with questions?</p> <p>11 A. I do not remember, but it would seem to be</p> <p>12 the case.</p> <p>13 Q. But sitting here today, you don't recall</p> <p>14 reaching out to Mr. Stanley for any information?</p> <p>15 A. I do not remember that, no.</p> <p>16 Q. Can I just see your file real quick.</p> <p>17 A. (Hands to Ms. Leskin.)</p> <p>18 Q. Among the pages in your file looks to be</p> <p>19 e-mail correspondence between you and Dr. Pomeranz.</p> <p>20 I'll ask you to take a look at that one</p> <p>21 specifically. And is this an e-mail that you</p> <p>22 printed out?</p> <p>23 A. I think so.</p> <p>24 Q. And the date on that looks to be January</p> <p>25 5th, 2002?</p>
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<p>1 of as of that date?</p> <p>2 A. I do not know.</p> <p>3 Q. Are you a member of the North American</p> <p>4 Neuro-Ophthalmology Society?</p> <p>5 A. I am not.</p> <p>6 Q. Now, at some point in time after receiving</p> <p>7 that e-mail that Mr. Stanley sent to Dr. Pomeranz,</p> <p>8 did you contact Dr. Pomeranz?</p> <p>9 A. I don't believe I contacted Dr. Pomeranz, I</p> <p>10 believe he probably contacted me.</p> <p>11 Q. Okay, and when did that occur?</p> <p>12 A. Probably sometime in two thousand -- end of</p> <p>13 2001 or beginning of 2002.</p> <p>14 Q. And how did Dr. Pomeranz contact you?</p> <p>15 A. I think that Mr. Stanley had let me know</p> <p>16 that he had some questions about the dosing that he</p> <p>17 was taking and so on.</p> <p>18 (Bhavsar Deposition Exhibit No. 4</p> <p>19 marked for identification.)</p> <p>20 Q. We've marked as Exhibit 4 a letter from</p> <p>21 Mr. Stanley to you, dated January 9, 2002. Is that</p> <p>22 a copy of a letter you received from Mr. Stanley on</p> <p>23 or about January 9th, 2002?</p> <p>24 A. Yes.</p> <p>25 Q. And you in fact have a copy of that letter</p>	<p>1 A. Yes.</p> <p>2 Q. Now, on the way your e-mail prints, is the</p> <p>3 earliest e-mail the one at the bottom and then you</p> <p>4 read up? Or is the earliest e-mail the one at the</p> <p>5 top and then you read down?</p> <p>6 A. The earliest e-mail is probably on the</p> <p>7 bottom.</p> <p>8 Q. And that first e-mail is from whom to whom?</p> <p>9 A. From Dr. Pomeranz to me.</p> <p>10 Q. And what did Dr. Pomeranz ask you?</p> <p>11 A. "Do you have the patient case ready for me?"</p> <p>12 Q. Had you spoken to Dr. Pomeranz prior to the</p> <p>13 date of his e-mail to you?</p> <p>14 A. It is possible.</p> <p>15 Q. And do you recall how that came to be?</p> <p>16 A. No. But I would guess that he wanted to</p> <p>17 accumulate cases of association -- possible</p> <p>18 associations of Viagra use with optic neuropathy.</p> <p>19 And already knew of Mr. Stanley's case because of</p> <p>20 Mr. Stanley's communication with Dr. Pomeranz, and</p> <p>21 he probably would have asked me to include that case</p> <p>22 in his series that he was already accumulating.</p> <p>23 Q. Did you provide Dr. Pomeranz with copies of</p> <p>24 Mr. Stanley's medical records?</p> <p>25 A. I do not think so, no.</p>

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<p>1 Q. Did you provide the written -- the write-up 2 of Mr. Stanley's case for inclusion in the article? 3 A. Yes. 4 Q. Now, the top e-mail is the one that -- last 5 one that Dr. Pomeranz had sent to you, correct? 6 A. I believe so. 7 Q. Okay. And in it Dr. Pomeranz asks you some 8 questions, correct? 9 A. Yes. 10 Q. And what questions did he ask you? 11 A. "Do you know what dose of Viagra he was 12 using? 50 milligrams or 100 milligrams? How long 13 and how frequently had he been using the medication 14 when the nonarteritic anterior ischemic neuropathy 15 occurred? When was his last use of Viagra prior to 16 developing NAION?" 17 Q. Okay. After you received that e-mail from 18 Dr. Pomeranz, what did you do? 19 A. I do not remember. 20 Q. Did you write a letter to Mr. Stanley? 21 A. I don't think so. 22 Q. Did you call Mr. Stanley? 23 A. It is possible. 24 Q. There's handwritten notes on that e-mail. 25 Is that your handwriting?</p>	<p>1 Q. Sure. After you received the letter that 2 we've marked as Exhibit 4, dated January 9th, 2002, 3 did you have any further correspondence with 4 Mr. Stanley prior to the publication of the article 5 with Dr. Pomeranz? 6 A. I do not know. 7 Q. If you had would you have noted it in your 8 file? 9 A. It's possible. 10 Q. I'd ask you to take a look then. 11 MR. MILLER: Doctor, can I see that 12 e-mail. Thank you, sir. 13 A. (Examining.) Yes. 14 Q. When was that communication? 15 A. April 11th, 2005. 16 Q. And what was the question -- what was the 17 form of the communication? 18 A. Telephone call from Mr. Stanley. "He called 19 and would like me to call him regarding the recent 20 article in the journal you co-authored." 21 Q. And did you call him? 22 A. Yes. 23 Q. And what was the nature of the conversation? 24 A. He wanted a copy of the article. 25 Q. And did you send that to him?</p>
<p style="text-align: right; padding-right: 10px;">Page 59</p> <p>1 A. Yes. 2 Q. And what do those notes say? 3 A. "Dosage question. Frequently [sic] one time 4 per week. Call patient in a few days. Patient will 5 call me." 6 Q. Okay, and in terms -- you have an arrow from 7 the last question, which is, "When was the last use 8 of Viagra prior to developing NAION," you have an 9 arrow and you wrote "few days," correct? 10 A. Yes. 11 Q. Do you know what that note was based on? 12 A. What the patient would have told me. 13 Q. Would that have been during your telephone 14 conversation? 15 A. Yes. 16 Q. And then you received this letter that we've 17 marked as Exhibit 4 after or before your 18 conversation with him on the phone? 19 A. This would have been after. 20 Q. And after you received the letter dated 21 January 9th, 2002 that we've marked as Exhibit 4, 22 did you have any further conversation with 23 Mr. Stanley prior to writing up the article for 24 Dr. Pomeranz? 25 A. Can you repeat the question.</p>	<p>1 A. I think so. 2 Q. Did you have any conversation with him after 3 that? 4 A. Not that I recall. 5 Q. I ask you to turn to that last page in your 6 files. I think there was some other notes you may 7 have had there. 8 A. (Witness complies.) 9 Q. What's the date on the pink slip that 10 appears on that last page? 11 A. May 31st, 2005. 12 Q. And what did the note say? 13 A. He would -- "patient does not want to be 14 interviewed." 15 Q. Do you know what that was referring to? 16 A. No. 17 Q. Did you call him back after that he called 18 you on May 31st, 2005? 19 A. Not that I know of. 20 Q. There's one other note, looks like it's 21 dated May 14th, 2001. What does that say? 22 A. "Patient asked if the scleral buckle could 23 be related to decreased blood flow to the optic 24 nerve. I said no, as far as we know." 25 Q. Are you aware of any case reports</p>

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<p>1 associating ischemic optic neuropathy with retinal 2 detachment?</p> <p>3 A. No.</p> <p>4 (Bhavsar Deposition Exhibit No. 5 5 marked for identification.)</p> <p>6 Q. Looking back at Mr. Stanley's letter dated 7 January 9th, 2002 to you, at the bottom of the 8 letter Mr. Stanley says, "I checked on the history 9 of the problem I had in my right eye in early 1987. 10 At the time, I complained of fuzziness, and my eye 11 doctor's notes show that I got an angiogram. They 12 also mention 'RPE atrophy,' that he couldn't say it 13 wasn't papillitis, and that it was no longer visible 14 a month after my first complaint."</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Did you review any of the medical records 18 from Mr. Stanley's right eye from 1987?</p> <p>19 A. No.</p> <p>20 Q. We've marked as Exhibit 5 copy of an article 21 published in the Journal of Neuro-Ophthalmology 22 entitled, "Nonarteritic Ischemic Optic Neuropathy 23 Developing Soon After Use of Sildenafil (Viagra): A 24 Report of Seven New Cases," by Howard D. Pomeranz 25 and Abdhish R. Bhavsar.</p>	<p>1 could use the case?</p> <p>2 A. I do not recall.</p> <p>3 Q. Did you review any of Mr. Stanley's medical 4 records other than your own medical records in 5 writing up the summary of his case?</p> <p>6 A. I should go back one sentence.</p> <p>7 Q. Okay.</p> <p>8 A. By the fact that Mr. Stanley sent me 9 information that Dr. Pomeranz requested for his 10 gathering of cases, this would imply consent of the 11 patient to be including his information in that 12 article. Because he supplied us with detailed 13 information after that request was made.</p> <p>14 Q. Okay. Thank you.</p> <p>15 Did you review any of Mr. Stanley's medical 16 records, other than your own records, prior to 17 writing up the summary of his case for this article?</p> <p>18 A. No, I did not.</p> <p>19 Q. And you didn't provide copies of any of the 20 records to Dr. Pomeranz, right?</p> <p>21 A. No, I did not.</p> <p>22 Q. If you look at Mr. Stanley's letter to you 23 dated January 9th, 2002, he said, "I was using 24 Viagra about once a week at the time and thought 25 that I had used it a day or two before the problem</p>
<p>1 Is this the article you co-wrote with 2 Dr. Pomeranz?</p> <p>3 A. Yes.</p> <p>4 Q. Now, this article summarizes seven patients, 5 right?</p> <p>6 A. That's correct.</p> <p>7 Q. And case No. 5 is Mr. Stanley's case, 8 correct, on page 11 of the article?</p> <p>9 A. I believe that's correct.</p> <p>10 Q. Are any of the other six patients summarized 11 in this article your patients?</p> <p>12 A. No.</p> <p>13 Q. Did you review any medical records for any 14 of these other six patients?</p> <p>15 A. No.</p> <p>16 Q. Do you know who did?</p> <p>17 A. Dr. Pomeranz would have, since he wrote that 18 portion of the paper.</p> <p>19 Q. So you didn't comment on the other six 20 patients?</p> <p>21 A. I did not.</p> <p>22 Q. Did you tell Mr. Stanley that you were 23 writing his case up for publication?</p> <p>24 A. I believe, yes.</p> <p>25 Q. Did you ask him permission as to whether you</p>	<p>1 arose." Do you see that sentence?</p> <p>2 A. Yes.</p> <p>3 Q. If you turn to the article under Case 5, 4 sentence 1 says, "A 69-year-old man used a single 5 50-milligram sildenafil tablet and reported acute 6 visual loss in the left eye the next day."</p> <p>7 Do you see that sentence?</p> <p>8 A. Yes.</p> <p>9 Q. Did you have any additional information from 10 Mr. Stanley between the time that you received his 11 letter dated January 9th, 2002 and the publication 12 of this article?</p> <p>13 A. No.</p> <p>14 Q. The next sentence of Mr. Stanley's letter 15 says: "Whether I used 50 milligrams or 100 16 milligrams on that particular occasion I can't 17 recall." Do you see that sentence?</p> <p>18 A. Yes.</p> <p>19 Q. Did you receive any information other than 20 that from Mr. Stanley regarding the dose he took 21 prior to the publication of the article?</p> <p>22 A. No.</p> <p>23 Q. If you go back to your letter dated 24 September 5th, 2000.</p> <p>25 MR. MILLER: What page number is that?</p>

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<p style="text-align: right;">Page 66</p> <p>1 MS. LESKIN: 10 from Exhibit 3. 2 BY MS. LESKIN: 3 Q. In the first paragraph you wrote that, "He 4 had successful retinal detachment repair surgery in 5 the left eye on June 6, 2000, however, noticed 6 sudden decreased vision in the left eye over the 7 past one to two weeks." Right? 8 A. Yes. 9 Q. And September 5th was the first time you saw 10 him, correct, after he noticed the decrease in 11 vision in the left eye? 12 A. Yes. 13 Q. Are you aware as to whether he had seen any 14 other eye doctor -- 15 A. No. 16 Q. Prior to you seeing him on September 5th? 17 A. No. 18 Q. And if you look at the article that we 19 marked as Exhibit 5, that second paragraph says, 20 "Visual acuities one day after the acute visual loss 21 in the left eye were 20/32 in the right eye and 22 2/200 in the left eye." Right? 23 A. Yes. 24 Q. And if you go back to your notes of that 25 visit on September 5th, 2000?</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. You had assessed what the value was? 2 A. Yes. 3 Q. If you turn to page 12 of your article, 4 Exhibit 5, if you look at the right-hand column 5 towards the bottom it says, you see where it starts 6 "Because of the lack of a model"? 7 A. Yes. 8 Q. "In which to test for a relationship between 9 sildenafil and NAION, a definite causal relationship 10 cannot be established at this time"?</p> <p>11 A. Yes. 12 Q. That's what you wrote, correct? 13 A. That's what is written in the article. 14 Q. That you're an author of, correct? 15 A. That's correct. 16 Q. Can you go back to the chart that's on page 17 10. The right-hand column is labeled "Risk 18 Factors." Right? See that column? 19 A. Yes. 20 Q. Case No. 5, which is Mr. Stanley, it's 21 listed HTN, which is hypertension, correct? 22 A. Yes. 23 Q. And RD left eye; retinal detachment of the 24 left eye, correct? 25 A. Yes.</p>
<p style="text-align: right;">Page 67</p> <p>1 MS. FYMAN: Page 2. 2 Q. You wrote that the Cardizem had been changed 3 to sotalol, correct? 4 A. Yes. 5 Q. Did you identify sotalol as one of the 6 medications in the write-up of the case? 7 A. No. 8 Q. Did you provide any information regarding 9 the problems he had had in his right eye in your 10 write-up of the case? 11 A. What problems in his right eye? 12 Q. The possible papillitis he had had back in 13 1987? 14 A. No. 15 Q. You mentioned his macular degeneration in 16 the write-up of the case? 17 A. No. 18 Q. If you turn to the chart that's on page 10 19 of the article we've marked as Exhibit 5. If you 20 look under case No. 5 under cup/disc ratio, it says 21 NK, not known, right? 22 A. Yes. 23 Q. You had measured his cup/disc ratio though, 24 right? 25 A. No, I did not measure it.</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Sitting here today, do you have an opinion 2 to a reasonable degree of medical certainty whether 3 Viagra can cause ischemic optic neuropathy? 4 MR. MILLER: Objection, calls for 5 expert testimony. But you can go ahead and answer. 6 A. Yes, I have an opinion. 7 Q. And what is your opinion? 8 A. I believe that there is an association in a 9 small number of patients who have used Viagra with 10 the development of nonarteritic anterior ischemic 11 optic neuropathy. But we do not have any evidence 12 of causality, as was written in the article. 13 Q. Sitting here today, do you have an opinion 14 to a reasonable degree of medical certainty whether 15 Viagra caused Mr. Stanley's ischemic optic 16 neuropathy? 17 MR. MILLER: Objection, calls for 18 expert testimony. 19 A. No. 20 Q. When did you first learn that Mr. Stanley 21 had filed a lawsuit against Pfizer? 22 A. (Examining.) Within the past week. 23 Q. And how did you learn that? 24 A. When my office manager said that we had 25 received a subpoena regarding Mr. Stanley.</p>

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<p>1 Q. Have you spoken to Mr. Stanley regarding the 2 litigation? 3 A. I have not. 4 Q. Have you spoken to anyone on Mr. Stanley's 5 behalf regarding the litigation? 6 A. No. 7 Q. Have you spoken to Dr. Pomeranz since the 8 article that's Exhibit 5 was published? 9 A. Yes. 10 Q. When was that? 11 A. A few years ago. 12 Q. And what was the nature of the conversation? 13 A. About an interview for Good Morning America. 14 Q. Were you interviewed on Good Morning 15 America? 16 A. I was not. 17 Q. Was he interviewed on Good Morning America? 18 A. Yes, he was. 19 Q. And what was the nature of the conversation 20 regarding that interview? 21 A. I believe it was that -- that I would not 22 tell them that this was a study that was done on 23 Viagra and anterior ischemic optic neuropathy. And 24 that -- that I would not be giving them an 25 interview. And that they had called me to give them</p>	<p>1 I clearly stated that. 2 Q. Did you and Dr. Pomeranz disagree as to the 3 nature of the study -- or the nature of the paper? 4 A. That is very possible, but I don't recall 5 that we had any dispute about that. 6 Q. Did Dr. Pomeranz term this a study? 7 MR. MILLER: Objection, not relevant. 8 A. I don't know. 9 Q. Have you spoken to Dr. Pomeranz since that 10 discussion? 11 A. I may have spoken to him in passing. 12 Q. Have you spoken to him about Viagra? 13 A. Not that I recall. 14 Q. Are you aware that Dr. Pomeranz is now at 15 Long Island Jewish in New York? 16 A. Yes, now that you've told me that. 17 Q. Did you know that he had left the University 18 of Minnesota? 19 A. Yes, I did. 20 Q. When did you find out he had left the 21 University of Minnesota? 22 MR. MILLER: Object, object to form. 23 A. Probably before he left I had known that he 24 was going to leave. 25 Q. Did you know there was litigation generally</p>
<p>1 an interview. And that he was going to do the 2 interview -- or he had done the interview. I don't 3 remember if I spoke to him before or after the 4 interview. 5 Q. Was it your decision not to give the 6 interview? Or was it Dr. Pomeranz's decision that 7 you shouldn't give the interview? 8 A. It would have been my decision. 9 Q. And why did you decide not to give an 10 interview to Good Morning America? 11 A. They had asked me a number of questions and 12 I made it so that they would not want to interview 13 me. 14 Q. What type of questions did they ask you? 15 A. They repeatedly tried to put words in my 16 mouth and link our paper to a study, essentially 17 trying to make our paper into a clinical trial, 18 which is not scientifically accurate or appropriate. 19 Q. Why not? 20 A. It is not a clinical trial. It is a case 21 report series. It's a retrospective case report 22 series, and that is all it is. It is not a study 23 and it's not a clinical trial. And if it is 24 attempted to be depicted that way by the press or by 25 anyone else, it is not scientifically accurate. And</p>	<p>1 involving Viagra and ischemic optic neuropathy? 2 A. No. 3 MS. LESKIN: I have no further 4 questions at this time. Thank you, Doctor. 5 EXAMINATION 6 BY MR. MILLER: 7 Q. Doctor, I introduced myself earlier. Pete 8 Miller, represent the plaintiff Richard Stanley. 9 I just have a few questions just to go over 10 a couple things that I probably had some confusion 11 on. 12 Sir, you were asked about the risk factors 13 of NAION. And I guess to go down the list here. 14 Hypertension. Sir, you're not an expert on 15 hypertension, is that a fair statement? 16 A. Yes. 17 Q. And you would -- you would refer [sic] to 18 someone who is an expert on hypertension as far as 19 the causation or hypertension being a risk factor in 20 the diagnosis of NAION? 21 MS. LESKIN: Objection to form. 22 A. I suppose that would be correct. 23 Q. And the same holds true for a cardiac -- 24 cardiac disease; you're not an expert in cardiac 25 disease?</p>

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<p style="text-align: right;">Page 74</p> <p>1 A. I am not. 2 Q. And same holds true for diabetes? 3 MS. LESKIN: Objection to form. 4 Q. You're not an expert in diabetes? 5 A. I am not an expert on diabetes, no. 6 Q. As someone who's involved in the care and 7 treatment of Richard Stanley's NAION, it's important 8 that you know his medical history, is that a fair 9 statement? 10 A. Yes. 11 Q. Knowing what you know now about the 12 potential association between Viagra and NAION, 13 would you have wanted to know of his Viagra use 14 during your care and treatment? 15 MS. LESKIN: Objection to form. 16 A. That would have been interesting to note. 17 Q. Would it be important for you to know as a 18 treater for Mr. Stanley that he was taking Viagra at 19 the time that he was diagnosed with NAION? 20 A. That would be helpful. 21 Q. Is that something that you ask your male 22 patients today that are diagnosed with NAION? 23 A. Yes. 24 Q. And you were asked earlier if you could look 25 at the eye and determine what caused the NAION. Is</p>	<p style="text-align: right;">Page 76</p> <p>1 A. I think that also would be unlikely to cause 2 NAION. 3 Q. Looking back at his medical history, did you 4 determine anything that was more likely to cause his 5 NAION than his use of Viagra? 6 MS. LESKIN: Objection to form. 7 A. It is possible. 8 Q. It's possible that you did see something 9 when you looked back in his history or? 10 A. Yes. 11 Q. Does anything stand out in your mind now 12 that you look back at his records? 13 MS. LESKIN: Objection to form. 14 A. Hypertension and heart disease. 15 Q. Is someone who has hypertension and a heart 16 disease more susceptible to NAION? Is that 17 statement accurate? 18 A. It is a risk factor for development of 19 NAION. 20 Q. Taking a look at the article which was 21 Exhibit 5, and you were asked about a portion that 22 was written outside of the case study, specifically 23 case 5. My understanding what you testified to 24 earlier, that the only portion that you wrote of 25 this was the case study for case 5?</p>
<p style="text-align: right;">Page 75</p> <p>1 it ever possible to look at an eye and determine 2 what the cause of the NAION is? 3 A. I do not think so. 4 Q. Are there any techniques where you can 5 determine the cause of NAION? 6 A. Not that I'm aware of. 7 Q. Did the surgery that you performed on 8 Mr. Stanley's retina, the retinal detachment 9 surgery, that did not cause his NAION, is that an 10 accurate statement? 11 MS. LESKIN: Objection to form. 12 A. I think that's very likely. 13 Q. Very likely that it did not cause it? 14 A. Yes. 15 Q. And the same holds true for the scleral 16 buckle that you placed on his eye, that wouldn't 17 have caused the NAION? 18 MS. LESKIN: Objection to form. 19 Q. Is that an accurate statement? 20 A. I think that it would be very unlikely to 21 cause that. 22 Q. The same holds true for the air bubble where 23 you used the sterile air to re-form the eye, that 24 wouldn't cause NAION, is that an accurate statement? 25 MS. LESKIN: Objection to form.</p>	<p style="text-align: right;">Page 77</p> <p>1 MS. LESKIN: Objection to form. 2 A. I do not know that I actually wrote that 3 section, but I submitted information to Dr. Pomeranz 4 for that history of that section. 5 Q. When you read the study and you read case 5, 6 did you have any issue with the way Dr. Pomeranz 7 wrote that section? 8 A. I do not recall at that time. But I believe 9 that the case was markedly abbreviated in order to, 10 in order to streamline the paper. 11 Q. Do you agree that it's a fair and accurate 12 summary of the case study? 13 MS. LESKIN: Objection to form. 14 A. It is not -- does not appear to be 100 15 percent accurate, but it conveys the general 16 principles of his case history. 17 Q. Is there anything about the accuracy of case 18 study 5 as it's written in this paper that concerns 19 you as far as the accuracy of the entire paper goes? 20 MS. LESKIN: Objection to form. 21 A. Yes. 22 Q. And what would that be? 23 A. Dose of medication used and the time course 24 prior to development of NAION, as well as the 25 history of visual acuity loss.</p>

20 (Pages 74 to 77)

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Abdhish R. Bhavsar, M.D. 8/11/2008
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<p style="text-align: right;">Page 78</p> <p>1 Q. Going back to the time of use, you were 2 asked about an e-mail. I don't believe it was 3 marked as an exhibit, but it's part of your record. 4 And that one right in front of you, Doctor, the 5 5 January 2002 e-mail from Dr. Pomeranz in which you 6 answered a question in there. And I'll paraphrase, 7 it was the time from when the drug was used until he 8 had the issue with the eye, and in there it's your 9 handwritten note that it was a few days.</p> <p>10 You were asked, Doctor, if that was from a 11 writing or a phone call. And originally is it 12 accurate to say that you didn't recall or you don't 13 recall as you sit here whether it was a phone call 14 or a writing?</p> <p>15 A. It could only have been a phone call, 16 because on the note I've written to call patient and 17 patient will call me and then I've written the 18 responses next to the sentence.</p> <p>19 Q. When in Exhibit 4, which is the letter from 20 Richard Stanley, January 9, 2002, we went over where 21 Mr. Stanley answers your questions, and one of the 22 bulleted items he says that he thought he had used 23 it a day or two before the problem arose.</p> <p>24 Did you have any reason to doubt what he had 25 written there?</p>	<p style="text-align: right;">Page 80</p> <p>1 FURTHER EXAMINATION 2 BY MS. LESKIN: 3 Q. Regarding the association between Viagra use 4 by Mr. Stanley and the onset of his ischemic optic 5 neuropathy, sitting here today, can you say to a 6 reasonable degree of medical certainty that that is 7 anything more than a temporal association? 8 A. No. 9 MS. LESKIN: Nothing further. 10 MR. MILLER: We're done. 11 MS. LESKIN: Okay. Thank you. If we 12 can get copies of those pages, that would be great, 13 Doctor. We're off the record -- 14 You have the right to read and review 15 the transcript and make corrections. Or you could 16 waive that. Do you have a preference? 17 THE WITNESS: Okay, I'll review them. 18 MS. LESKIN: Okay. 19 (Deposition concluded at 7:22 p.m.) 20 (Discussion held off the record.) 21 MS. LESKIN: Dr. Bhavsar has been kind 22 enough to ask his -- agree to ask his office to copy 23 the additional pages from his file that were not 24 previously provided following the conclusion of the 25 deposition today.</p>
<p style="text-align: right;">Page 79</p> <p>1 MS. LESKIN: Objection to form. 2 A. No. 3 Q. No? 4 As a doctor who is involved in the care and 5 treatment of Mr. Stanley's eyesight, can you tell me 6 when you believe that he developed NAION (NAY-on, 7 phonetic) -- or NAION (NIE-on, phonetic), excuse me? 8 A. Sounds like a few weeks, one to two weeks 9 prior to September 5th, 2000. 10 Q. One second. 11 Sir, you say that -- and correct me if I'm 12 wrong, but the use of Viagra is associated with a 13 small number of your patients with regard to the 14 diagnosis of NAION. Is that? 15 MS. LESKIN: Objection to form. 16 Q. Well, I'll tell you, I'll rephrase it. 17 Is there an association with Viagra and 18 NAION? 19 A. Yes. 20 Q. Is there an association of Richard Stanley's 21 NAION and his use of Viagra? 22 A. Yes. 23 MR. MILLER: I have no further 24 questions. 25</p>	<p style="text-align: right;">Page 81</p> <p>1 Copies of those records will be supplemented 2 and attached to the deposition as Exhibit 6. Is 3 that acceptable? 4 MR. MILLER: That's acceptable. 5 (REPORTER'S NOTE: Exhibit 6 will be 6 marked for identification upon receipt of the 7 documents.) 8 MS. LESKIN: Thank you. We're off. 9 (Deposition concluded at 7:23 p.m.) 10 ***** 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

21 (Pages 78 to 81)

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1 REPORTER'S CERTIFICATE

2 STATE OF MINNESOTA)
3) ss.
4 COUNTY OF DAKOTA)

5 I hereby certify that I reported the
6 deposition of ABDHISH R. BHAVSAR, M.D. on August 11,
7 2008 in Minneapolis, Minnesota, and that the witness
8 was by me first duly sworn to tell the whole truth;

9 That the testimony was transcribed by me and
10 is a true record of the testimony of the witness;

11 That the cost of the original has been
12 charged to the party who noticed the deposition, and
13 that all parties who ordered copies have been
14 charged at the same rate for such copies;

15 That I am not a relative or employee or
16 attorney or counsel of any of the parties, or a
17 relative or employee of such attorney or counsel;

18 That I am not financially interested in the
19 action and have no contract with the parties,
20 attorneys, or persons with an interest in the action
21 that affects or has a substantial tendency to affect
22 my impartiality;

23 That the right to read and sign the
24 deposition by the witness was reserved.

25 WITNESS MY HAND AND SEAL THIS 21st day of
August, 2008.

Mary P. Mitchell, RDR, CRR, CCP
Notary Public, Dakota County, Minnesota
My commission expires January 31, 2010.

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